

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JAMES M. PLASSE,

Plaintiff,

vs.

Civil Action No. 04-CV-30056-MAP

**TYCO ELECTRONICS
CORPORATION,**

Defendant.

AFFIDAVIT OF MARK DIANA

I, Mark Diana, depose and state as follows:

1. I am counsel for Defendant Tyco Electronics Corporation ("TEC") in the above-captioned litigation. I was admitted to appear in this matter pro hac vice pursuant to Local Rule 83.5.3(b). This Affidavit is offered in support of TEC's Application for Attorneys Fees and Costs made in connection with the Court's September 7, 2006 Memorandum and Order allowing TEC's Motion to Dismiss and For Sanctions.

2. I am a shareholder with the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., in Morristown, New Jersey. Ogletree Deakins is a national labor and employment law firm with approximately 325 attorneys and offices in 25 cities throughout the United States. Ogletree Deakins' practice is limited to the representation of management in labor, employment, employee benefits and immigration law matters. I serve as Managing Shareholder of the Morristown, New Jersey office.

3. I am admitted to practice law in New Jersey, the United States District Court for the District of New Jersey, and the United States Court of Appeals for the First and Third

Circuits. I have also been admitted to practice pro hac vice in various other courts around the country.

4. I am a graduate of the University of Delaware (1985) and Suffolk University Law School (1988). After a one year judicial clerkship with the New Jersey Superior Court, Appellate Division (1988-1989), my practice has been limited exclusively to the representation of management in employment and labor matters.

5. Over the past 17 years, I have represented employers in hundreds of employment litigations, including discrimination, retaliation, whistleblower, wrongful termination and other related suits in state and federal courts and before administrative agencies in New Jersey and various other states. I have performed the full range of litigation activities, including discovery, motion practice, trial work and appellate practice. Several of the matters for which I have been retained have resulted in reported decisions.

6. I have been a member of the New Jersey Supreme Court Committee on Model Civil Jury Charges, Employment Law Subcommittee, since 1998. I am also a member of the Executive Board of the Labor and Employment Law Section of the New Jersey State Bar Association. I am a frequent lecturer on employment law matters for the New Jersey Institute for Continuing Legal Education and other organizations, and frequently contribute articles to various employment law publications.

7. I am listed in the Best Lawyers in America publication for 2006 and 2007, and the New Jersey Super Lawyers publication for 2005 and 2006, for employment law.

8. My current (2006) standard rate for new matters is \$350 per hour.

9. In or about March 2004, TEC retained the law firm of Clements & Clements to represent it in this matter. Effective January 2005, Ogletree Deakins became national labor and

employment counsel for Tyco International (“Tyco”), including TEC. Thus, beginning in or about January 2005, Ogletree Deakins commenced its representation of TEC in this matter, but retained Clements & Clements as its local counsel.

10. Under its arrangement with Tyco, Ogletree Deakins is paid a flat fee each month by Tyco for all employment and labor law services, which includes all fees for services rendered in this matter.¹ The monthly fee negotiated between Tyco and Ogletree Deakins was intended to compensate Ogletree Deakins for the reasonably anticipated monthly volume of work at Ogletree Deakins’ standard rates as of January 2005, discounted by 6%. Thus, my time is “billed” to Tyco at an hourly rate of \$296 (6% discount off my 2005 standard rate of \$315) and Ms. Slivinski’s time is “billed” to Tyco at an hourly rate of \$244 (6% discount off her 2005 standard rate of \$260).

11. Although Ogletree Deakins is paid a flat fee each month, the arrangement requires that Ogletree Deakins’ attorneys keep track of their time, and submit their time on monthly statements, just as if the firm were billing Tyco for time on an hourly basis. This arrangement allows Tyco to allocate legal expenses to the proper business units, and affects the percentage of the flat fee that must be paid by TEC and the other business units each month. It also allows Ogletree Deakins attorneys to measure their productivity under a customary billable hours framework.

12. Under its arrangement with Tyco, Ogletree Deakins is responsible for all fees charged by local counsel after January 1, 2005, including the fees charged by Clements & Clements in this matter. Thus, all fees charged by Clements & Clements in this matter after January 1, 2005 have been paid by Ogletree Deakins.

¹ The original arrangement between Tyco and Ogletree Deakins was for a period of 18 months, with 1/18th of the total flat fee paid to Ogletree Deakins each month.

13. Attached hereto as Exhibit A is a summary of all activities that Ms. Slivinski and I have performed in this matter pertaining to the investigation of and litigation concerning Mr. Plasse's acts of evidence concealment and destruction. I prepared the attached summary by duplicating our actual invoices, deleting entries that did not pertain to Mr. Plasse's misconduct, and then reorganizing the remaining entries into the following six categories: (1) Original Sanctions Motion To Dismiss; (2) Computer-Related Discovery Prior to Motion To Compel Discovery; (3) Motion to Compel Computer-Related Discovery; (4) Ink Dating Analysis; (5) Computer-Related Discovery After Motion to Compel Discovery; and (6) Renewed Sanctions Motion to Dismiss.

14. Tyco requires that Ogletree Deakins utilize task billing (rather than block billing), so in almost all cases the time entries were easily segregated into the foregoing categories. A very small number of entries (fewer than 10), included activities that did not exclusively fall into one of these six categories. In those cases, the inapplicable activities were omitted and a commensurate time reduction was made.

15. Specifically excluded from the attached time summary are litigation activities that were not related to Plasse's misconduct. Thus, excluded from the time summary are activities such as: investigating of the allegations in the Complaint; preparing four TEC witnesses for deposition and defending those depositions; numerous strategy conferences with co-counsel and the client regarding the litigation; and preparing TEC's Motion for Summary Judgment (which TEC was not ultimately required to file).

16. I recognize that the Court's task in reviewing a fee application is to subtract from the claimed hours time which the Court finds to be "duplicative, unproductive, excessive or otherwise unnecessary." I have carefully reviewed our time records to eliminate any entries that

might arguably be characterized as such. In addition, in order to remove any doubt whatsoever, I have applied an additional 10% reduction to the total fees claimed. In total, we request reimbursement of fees totaling \$47,032.92.

17. Although I have submitted the attached time summary as a convenience to the Court, if the Court would prefer that our actual time records be submitted, they will be promptly supplied upon request.

18. In addition to the attorney's fees described on the attached time summaries, TEC has incurred various expenses directly attributable to Mr. Plasse's misconduct. These expenses fall into the following three categories: (1) the fees paid to TEC's computer expert EvidentData; (2) the court reporter/transcript fees associated with Plasse's court ordered deposition on computer discovery issues; and (3) the fees paid to TEC's ink dating expert.

19. Attached as Exhibit B are the invoices submitted by EvidentData, totaling \$17,293.32. These sums have all been paid to EvidentData.

20. Attached as Exhibit C is the invoice submitted by the court reporter for the court-ordered deposition of Mr. Plasse pertaining to computer discovery issues. This sum, \$179, has been paid to the reporter.

22. Attached as Exhibit D is a check stub reflecting payment to TEC's ink dating expert in the amount of \$3,000.00. This sum has been paid to the expert.

23. All of these expenses were incurred as a direct result of Mr. Plasse's misconduct and TEC's efforts to discover and remedy same. As such, we request full reimbursement of these expenses, totaling \$20,472.32.

24. Attached hereto as Exhibit E is the decision in Leon v. IDX Systems Corp., 03-cv-1158, Order Dismissing Plaintiff's Claims Due to Plaintiff's Spoliation of Evidence (dated September 30, 2004).

Signed under the pains and penalties of perjury.



Dated September 28, 2006

Mark Diana

4381543.1

EXHIBIT A

ODNSS Fees

1. Original Sanctions Motion To Dismiss				
Date	Atty	Activity	Time	Fee
3/1/2005	MD	Review and revise reply brief in support of motion for sanctions.	0.5	148
3/8/2005	MD	Review Reply Brief and supporting affidavits in support of motion for sanctions.	0.3	88.8
3/15/2005	MD	Review and respond to email from local counsel, Jeff Clements, regarding motion hearing.	0.3	88.8
3/18/2005	MD	Conduct conference call with Mr. Clements regarding strategy.	0.5	148
4/12/2005	MD	Telephone conference with local counsel, Jeff Clements regarding motion and discovery strategy.	0.3	88.8
4/13/2005	MD	Telephone conference with Mr. Post and Mr. Clements regarding status of case and future motion strategy.	0.5	148
4/13/2005	LJS	Conference call with Mark Diana, Jeff Clements, and Charlie Post regarding depositions, pending motion to dismiss, and summary judgment.	0.5	122
4/27/2005	MD	Review motion papers in connection with motion to dismiss hearing.	0.7	207.2
4/28/2005	MD	Review file in preparation for hearing on sanctions motion.	3	888
4/28/2005	MD	Telephone conference with local counsel Mr. Clements regarding preparation for hearing; attend hearing.	4	1184
TOTAL			10.6	3111.6

ODNSS Fees

2. Computer-Related Discovery Prior to Motion To Compel Discovery				
Date	Atty	Activity	Time	Fee
4/15/2005	LJS	Revisions to correspondence with plaintiff's counsel regarding defendant's position on outstanding discovery disputes.	0.2	48.8
4/28/2005	MD	Draft outline of computer inspection request letter to plaintiff's counsel.	2	592
4/29/2005	MD	Draft letter to plaintiff's counsel regarding computer inspection and original document request.	2.7	799.2
5/2/2005	MD	Review and revise Ms. Martin's comments on computer inspection/request letter.	1.2	355.2
5/4/2005	MD	Telephone conference with Mr. Post and Mr. Clements regarding status of discovery and sanctions motion.	1	296
5/4/2005	LJS	Preparation for and participation in conference call with Charlie Post, Jeff Clements, and Mark Diana.	1.3	317.2
5/6/2005	MD	Telephone conference with Ms. Martin and computer expert Mr. Spenser regarding computer inspection issues.	0.5	148
5/6/2005	MD	Revise letter to plaintiff's attorney regarding computer inspection.	0.4	118.4
5/6/2005	LJS	Conference call with Mark Spencer, Ingrid Martin, and Mark Diana regarding use of computer expert.	0.5	122
5/12/2005	MD	Review correspondence from Mr. Cahillane regarding computer inspection.	0.4	118.4
5/12/2005	MD	Draft response to letter from Mr. Cahillane regarding computer inspection.	2.1	621.6
5/13/2005	MD	Continued drafting reply letter to Mr. Cahillan regarding computer inspection.	3.6	1065.6
5/25/2005	MD	Review computer expert engagement information supplied by Ms. Martin.	0.5	148
6/6/2005	MD	Review expert engagement letter; execute same.	0.2	59.2
TOTAL			16.6	4809.6

ODNSS Fees

3. Motion to Compel Computer-Related Discovery				
Date	Atty	Activity	Time	Fee
5/16/2005	MD	Email to Ms. Martin regarding discovery motion procedure.	0.2	59.2
5/17/2005	MD	Gather materials for motion to compel computer inspection.	3.2	947.2
5/17/2005	LJS	Review of sample motions to compel computer inspection.	0.8	195.2
5/18/2005	MD	Compile materials for Motion to Compel computer inspection and conduct research regarding motion to compel computer inspections.	3.2	947.2
5/23/2005	MD	Draft outline of Motion to Compel computer inspection.	0.5	148
5/23/2005	LJS	Conference with Mark Diana regarding motion for computer inspection.	0.3	73.2
5/25/2005	MD	Email to Ms. Martin summarizing computer inspection motion strategy.	1.8	532.8
5/26/2005	LJS	Review of 4/28/05 hearing transcript.	0.7	170.8
5/26/2005	LJS	Review of caselaw regarding computer inspections.	1.5	366
5/27/2005	MD	Respond to Ms. Martin's email regarding computer inspection.	0.3	88.8
5/27/2005	LJS	Continued review of caselaw regarding computer inspection.	1.5	366
5/30/2005	MD	Draft Brief in support of Motion to Compel Computer Inspection.	3.5	1036
5/30/2005	LJS	Continued review of research regarding computer inspection.	3.3	805.2
5/31/2005	MD	Continue drafting brief in support of Motion to Compel Computer Inspection.	5.3	1568.8
6/1/2005	MD	Continued drafting of Brief in support of Motion to Compel computer inspection.	3.7	1095.2
6/1/2005	LJS	Preparation of motion to compel computer inspection.	3.7	902.8
6/2/2005	MD	Revise Brief in Support of Motion to Compel Computer Inspection.	1	296
6/2/2005	LJS	Continued preparation of motion to compel computer inspection.	5.5	1342
6/2/2005	LJS	Telephone call with Ingrid Martin regarding expert affidavit and motion to compel computer inspection.	0.1	24.4
6/2/2005	LJS	Research regarding computer inspections.	1.3	317.2

ODNSS Fees

6/3/2005	MD	Attend Scheduling Conference to discuss computer-related discovery issues; conferences with Mr. Clements regarding same	5	1480
6/5/2005	LJS	Revisions to brief regarding motion to compel computer inspection.	1.7	414.8
6/6/2005	MD	Interoffice conference with Ms. Slivinsky regarding revisions to Motion to Compel Computer Inspection.	0.5	148
6/6/2005	LJS	Conference with Mark Diana regarding scheduling conference and comments on draft motion to compel brief.	0.4	97.6
6/6/2005	LJS	Preparation of email correspondence with local counsel, Ingrid Martin, regarding status of computer expert's affidavit and additional papers to be filed with brief.	0.3	73.2
6/6/2005	LJS	Revisions to brief regarding motion to compel computer inspection.	0.8	195.2
6/8/2005	LJS	Review of caselaw regarding court-appointed experts; continued revisions to brief regarding motion to compel computer inspection.	4	976
6/9/2005	MD	Review brief in support of Motion to Compel Computer Inspection.	1.3	384.8
6/9/2005	LJS	Continued review of research regarding computer inspections; Continued preparation of motion to compel.	5.5	1342
6/9/2005	LJS	Preparation of email correspondence with local counsel regarding draft revised motion papers.	0.3	73.2
6/10/2005	MD	Revise Motion to Compel Computer Inspection.	1	296
6/10/2005	LJS	Revisions to motion to compel computer inspection.	4	976
6/12/2005	LJS	Review of research articles regarding court appointed experts.	3	732
6/13/2005	LJS	Telephone call with Ingrid Martin confirming exhibits to motion.	0.1	24.4
6/27/2005	MD	Review plaintiff's opposition to Motion to Compel Computer Inspection.	1.7	503.2
6/27/2005	LJS	Review of reply to plaintiff's partial opposition to motion to compel and preparation of motion for leave to file reply.	0.5	122
6/27/2005	LJS	Preparation of email correspondence with local counsel regarding draft motion for leave to reply.	0.2	48.8
TOTAL			71.7	19169.2

ODNSS Fees

4. Ink Dating Analysis				
Date	Atty	Activity	Time	Fee
7/15/2005	MD	Review original documents received from plaintiff for ink dating purposes.	0.6	177.6
7/15/2005	MD	Telephone conference with ink dating expert, [name redacted] regarding same.	0.3	88.8
7/22/2005	MD	Telephone conference with ink drafting expert [name redacted] regarding documents examination.	0.7	207.2
7/22/2005	MD	Email to Mr. Clement regarding ink dating analysis.	0.3	88.8
7/26/2005	MD	Email to ink dating expert [name redacted] regarding analysis.	0.2	59.2
8/1/2005	MD	Telephone conference with [name redacted] regarding status of ink dating analysis.	0.3	88.8
TOTAL			2.4	710.4

ODNSS Fees

5. Computer-Related Discovery After Motion to Compel Discovery				
Date	Atty	Activity	Time	Fee
7/21/2005	MD	Review outline for plaintiff's deposition regarding computer production.	1	296
7/21/2005	MD	Telephone conference with Ms. Martin regarding computer deposition.	0.8	236.8
7/22/2005	MD	Telephone conference with Ms. Martin and Mr. Clements regarding computer inspection deposition and next steps.	0.7	207.2
7/27/2005	MD	Telephone conferences with Mr. Clements and Ms. Martin regarding initial computer expert report.	0.6	177.6
7/27/2005	LJS	Confer with Mark Diana regarding preliminary analysis of computer expert.	0.2	48.8
7/28/2005	MD	Telephone conference with L.J. Slivinski regarding computer inspection outcome.	0.5	148
7/28/2005	LJS	Conference call with local counsel and computer expert.	2.1	512.4
7/28/2005	LJS	Confer with Mark Diana regarding computer expert's findings.	0.2	48.8
7/29/2005	MD	Review documents supplied from computer expert after inspection of plaintiff's computer.	0.3	88.8
8/2/2005	MD	Telephone conference with Mr. Clements regarding computer inspection results and sanctions motion.	0.9	266.4
8/5/2005	MD	Telephone conference with Ms. Martin regarding sanctions motion and expert report and review of expert report format.	1	296
8/12/2005	MD	Multiple emails to and from local counsel (Ms. Martin) regarding forensic computer expert findings and report.	0.5	148
TOTAL			8.8	2474.8

ODNSS Fees

6. Renewed Sanctions Motion to Dismiss				
Date	Atty	Activity	Time	Fee
8/15/2005	MD	Review expert report from forensic computer expert and summarize same for renewed sanctions motion.	2.3	680.8
8/16/2005	MD	Continued review of expert forensic report and preparation of motion outline.	4.7	1391.2
8/16/2005	MD	Draft email to Mr. Post regarding status of computer inspection and future strategy.	0.5	148
8/16/2005	LJS	Receipt and review of computer expert's Preliminary Report.	0.3	73.2
8/16/2005	LJS	Receipt and review of draft outline of brief in support of renewed sanctions motion.	0.2	48.8
8/17/2005	MD	Continued preparation of renewed motion to dismiss/sanctions motion.	4.6	1361.6
8/17/2005	MD	Telephone conference with Ms. Martin, Ms. Slivinski and Mr. Clements regarding sanctions motion.	0.6	177.6
8/17/2005	MD	Telephone conference with Ms. Martin, Mr. Spencer regarding expert report.	1.1	325.6
8/17/2005	LJS	Conference call with Mark Diana, Jeff Clements, and Ingrid Martin regarding computer expert's report and motion for sanctions.	0.6	146.4
8/17/2005	LJS	Receipt and review of transcript of plaintiff's recent deposition.	0.5	122
8/17/2005	LJS	Receipt and review of email correspondence from Jeff Clements regarding comments to draft outline for sanctions motion.	0.1	24.4
8/18/2005	MD	Continued drafting of Brief in Support of Motion to Dismiss.	2	592
8/19/2005	MD	Continue drafting Brief in Support of Motion to Dismiss.	3.7	1095.2
8/19/2005	LJS	Review of and revisions to draft brief in support of renewed motion for sanctions.	1.5	366
8/22/2005	MD	Revise sanctions motion brief.	0.9	266.4
8/23/2005	MD	Telephone conference with Mr. Clements regarding status of sanction motion filing.	0.3	88.8
8/23/2005	LJS	Exchange of emails with Ms. Martin regarding renewed motion for sanctions.	0.5	122

ODNSS Fees

8/30/2005	LJS	Review of email correspondence from Ingrid Martin regarding finalized draft of renewed sanctions motion and preparation of email correspondence with Ms. Martin advising of my revisions.	1	244
9/6/2005	MD	Telephone conference with Mr. Clements regarding filing of motion for sanctions.	0.2	59.2
9/27/2005	MD	Review plaintiff's Brief in Opposition to Motion for Sanctions.	0.9	266.4
9/27/2005	MD	Telephone conference with Mr. Clements regarding motion opposition.	0.5	148
9/27/2005	MD	Draft outline for Motion Sanctions Reply Brief.	3	888
9/28/2005	MD	Draft Reply Brief in support of Motion for Sanctions.	7.3	2160.8
9/28/2005	LJS	Receipt and review of plaintiff's expert's affidavit.	0.1	24.4
9/29/2005	MD	Continued drafting Reply Brief in support of Motion for Sanctions.	1.7	503.2
10/4/2005	MD	Review and revise reply Brief in support of sanctions.	1	296
10/5/2005	MD	Continue review and revisions to Reply Brief.	0.3	88.8
10/6/2005	MD	Finalize Reply Brief in Support of Sanctions Motion.	6.4	1894.4
10/6/2005	LJS	Receipt and review of and revisions to draft reply brief regarding renewed motion to dismiss.	1	244
10/7/2005	MD	Revise Reply Brief in support of sanctions.	0.2	59.2
11/16/2005	MD	Prepare for and conduct oral argument on Motion to Dismiss.	5	1480
11/17/2005	MD	Draft supplemental Brief in Support of Sanctions Motion.	2	592
11/18/2005	MD	Draft Supplemental Sanctions Brief.	5.7	1687.2
11/21/2005	MD	Continue drafting Supplemental Sanctions Brief.	2.5	740
11/21/2005	LJS	Research regarding dismissal as appropriate sanction for destruction of electronic evidence.	4.1	1000.4
11/22/2005	LJS	Continued research regarding dismissal as sanction.	1.1	268.4
11/23/2005	MD	Research additional case law supporting dismissal as sanction.	3.5	1036
11/28/2005	MD	Finalize Supplemental Brief in Support of Sanctions Motion.	3.3	976.8
12/2/2005	MD	Review plaintiff's Supplemental Sanctions Brief.	0.3	88.8
12/2/2005	MD	Email to Mr. Post regarding status of sanctions motion.	0.3	88.8

ODNSS Fees

6/14/2006	MD	Review recent sanctions decision from Massachusetts State Court.	0.4	118.4
TOTAL			76.2	21983.2

ODNSS Fees

SUMMARY			Hours	Fees
1. Original Sanctions Motion To Dismiss			10.6	3111.60
2. Computer-Related Discovery Prior to Motion To Compel Discovery			16.6	4809.60
3. Motion to Compel Computer-Related Discovery			71.7	19169.20
4. Ink Dating Analysis			2.4	710.40
5. Computer-Related Discovery After Motion to Compel Discovery			8.8	2474.80
6. Renewed Sanctions Motion to Dismiss			76.2	21983.20
Total			186.3	52258.80
10% Discount				(-) 5225.88
ENDING TOTAL BALANCE				47032.92

EXHIBIT B


EvidentData

We Find Answers

 8380 Maple Place, Suite 140
 Rancho Cucamonga, CA 91730
 TEL: 909.948.7714 FAX: 909.948.4365

Invoice

Date	Invoice #
6/30/2005	21697

Bill To
Ogletree, Deakins, Nash, Smoak & Steward, Mark Diana, Esquire 10 Madison Avenue Suite 402 Morristown, NJ 07960

Terms	Project	Contact
Due on receipt	Tyco-052305	

Date	Description	Qty	Rate	Amount
5/23/2005	Expert Consulting (P. Garza) Worked on declaration regarding inspection of computer systems and media. Telephone calls with M. Spencer.	2.25	375.00	843.75
5/24/2005	Expert Consulting (M. Spencer) Assisting with P. Garza's declaration.	0.5	375.00	187.50
5/27/2005	Expert Consulting (P. Garza) Assisting with P. Garza's updated declaration per Ingrid Martin's requests.	0.5	375.00	187.50
6/3/2005	Expert Consulting (P. Garza) Worked with M. Spencer on revised declaration regarding inspection of computer systems and media.	2	375.00	750.00
6/7/2005	Expert Consulting (P. Garza) Worked on draft of declaration. Participated on a teleconference call with M. Spencer and Ingrid Martin.	3	375.00	1,125.00
6/8/2005	Expenses Shipping Expense (P. Garza) Original signed declaration sent out Federal Express overnight letter. Tracking number 792302858086.	1	13.85	13.85

Total	\$3,107.60
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Payments/Credits	\$-3,107.60
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Balance Due	\$0.00
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We Find Answers
 8380 Maple Place, Suite 140
 Rancho Cucamonga, CA 91730
 TEL: 909.948.7714 FAX: 909.948.4365

Invoice

Date	Invoice #
7/31/2005	21717

Bill To
Ogletree, Deakins, Nash, Smoak & Steward, Mark Diana, Esquire 10 Madison Avenue Suite 402 Morristown, NJ 07960

Terms	Project	Contact
Due on receipt	Tyco-052305	

Date	Description	Qty	Rate	Amount
7/6/2005	Data Acquisition Consulting (M. Spencer) Discussed status of case and moving forward with Ingrid Martin.	0.25	250.00	62.50
7/20/2005	Data Acquisition Consulting (M. Spencer) Reviewed Plasse Computer Deposition Outline. Discussed with O. Yong. E-mailed Ingrid Martin comments.	0.5	250.00	125.00
7/26/2005	Data Acquisition (Non-tape)(M. Spencer) Traveled to Egan, Flanagan & Cohen in Springfield and obtained forensic image backups of Mr. Plasse's laptop and eight(8) floppy disks. Obtained logical images of 13 CDs. Returned to EvidentData.	9.25	250.00	2,312.50
7/27/2005	Forensic Analysis (M. Spencer) Created working copy of images - Mr. Plasse's laptop, eight(8) floppy disks, and 13 CDs. Verified and began analysis. Ran search terms, scripts, and reviewed file system to identify relevant data. Discussed status with Ingrid Martin. Restored laptop image to extract Internet History.	8	200.00	1,600.00
7/28/2005	Forensic Analysis (M. Spencer) Continued analysis of Mr. Plasse's floppy disks and laptop. Discussed findings with Ingrid Martin and Jeff Clements.	6	200.00	1,200.00
7/26/2005	Expenses (1) 80 GB hard drive to archive Mr. Plasse Laptop, floppy, and CD images.	1	109.00	109.00

Total \$5,409.00

Payments/Credits \$-5,409.00

Balance Due \$0.00


EvidentData

We Find Answers

 8380 Maple Place, Suite 140
 Rancho Cucamonga, CA 91730
 TEL: 909.948.7714 FAX: 909.948.4365

Invoice

Date	Invoice #
8/31/2005	21729

Bill To
Ogletree, Deakins, Nash, Smoak & Steward, Mark Diana, Esquire 10 Madison Avenue Suite 402 Morristown, NJ 07960

Terms	Project	Contact
Due on receipt	Tyco-052305	

Date	Description	Qty	Rate	Amount
8/2/2005	Forensic Analysis (M. Spencer) Continued review of Mr. Plasse laptop and floppy disks. Reviewed Windows Shortcuts for resume related activity. Investigating references to resumes in Outlook Express e-mail data files.	4.5	200.00	900.00
8/3/2005	Forensic Analysis (M. Spencer) Prepared for meeting with Ingrid Martin and Jeff Clements. Met with Ingrid and Jeff to discuss findings, open issues, and moving forward.	4	200.00	800.00
8/4/2005	Forensic analysis (M. Spencer) Began research and testing of issues discussed at 08/03/05 meeting with Ingrid Martin and Jeff Clements. Worked with Staff on research and testing. Developed report outline and discussed with Ingrid Martin.	4.5	200.00	900.00
8/5/2005	Forensic Analysis (M. Spencer) Began Tyco - James Plasse Preliminary Review report. Working with staff on research tasks. Discussed status with Ingrid Martin.	2	200.00	400.00
8/8/2005	Forensic Analysis (M. Spencer) Continued work on Tyco - James Plasse Preliminary Review report.	4	200.00	800.00
8/9/2005	Forensic Analysis (M. Spencer) Research unexpected date and time stamps, focused on Security System Events. Continued work on report. Worked with staff on Windows System Restore/Windows Shortcut interaction research.	5	200.00	1,000.00
8/10/2005	Reporting (M. Spencer) Discussed report status with Ingrid Martin. Began adding definitions of terms and more detail to report.	2	250.00	500.00

Total
Payments/Credits
Balance Due



8380 Maple Place, Suite 140
Rancho Cucamonga, CA 91730
TEL: 909.948.7714 FAX: 909.948.4365

Invoice

Date	Invoice #
8/31/2005	21729

Bill To
Ogletree, Deakins, Nash, Smoak & Steward, Mark Diana, Esquire 10 Madison Avenue Suite 402 Morristown, NJ 07960

Terms	Project	Contact
Due on receipt	Tyco-052305	

Date	Description	Qty	Rate	Amount
8/11/2005	Reporting (M. Spencer) Performed follow-up review, continued work on report. Organized exhibits.	4	250.00	1,000.00
8/12/2005	Reporting (M. Spencer) Continued report. Added section on Most Recently Used (MRU) lists. Continued to work with staff on Windows Restore/Windows Shortcut testing. Sent draft report to staff for comment. Discussed status with Ingrid Martin.	5	250.00	1,250.00
8/15/2005	Reporting (M. Spencer) Incorporated suggestions from staff and completed James Plasse Preliminary Review report. Sent cover letter, CD containing report and exhibits, and printed report to Ingrid Martin and Mark Diana via Fed Ex Priority Overnight.	3	250.00	750.00
8/17/2005	Case Management (M. Spencer) Conference call with Ingrid Martin and Mark Diana.	0.5	250.00	125.00
8/18/2005	Case Management (M. Spencer) Updated James Plasse Preliminary Review report per Ingrid Martin and Mark Diana's directions. Sent out via FedEx priority overnight in hard copy and on CD with cover letter.	1.25	250.00	312.50
8/15/2005	Expenses Shipping Expense (M. Spencer) Sent James Plasse Preliminary Review report to Mark Diana at Ogletree via FedEx Priority Overnight. Tracking #790611210692.	1	10.60	10.60
8/15/2005	Shipping Expense (M. Spencer)	1	9.01	9.01
			Total	
			Payments/Credits	
			Balance Due	


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 Rancho Cucamonga, CA 91730
 TEL: 909.948.7714 FAX: 909.948.4365

Invoice

Date	Invoice #
8/31/2005	21729

Bill To
Ogletree, Deakins, Nash, Smoak & Steward, Mark Diana, Esquire 10 Madison Avenue Suite 402 Morristown, NJ 07960

Terms	Project	Contact
Due on receipt	Tyco-052305	

Date	Description	Qty	Rate	Amount
8/18/2005	Sent James Plasse Preliminary Review report to Ingrid Martin at Clements via FedEx Priority Overnight. Tracking #792501135475. Shipping Expense (M. Spencer)	1	10.60	10.60
8/18/2005	Sent updated James Plasse Preliminary Review report to Mark Diana at Ogletree via FedEx Priority Overnight. Tracking #790123768224. Shipping Expense (M. Spencer)	1	9.01	9.01
	Sent updated James Plasse Preliminary Review report to Ingrid Martin at Clements via FedEx Priority Overnight. Tracking #792361579660.			
			Total	\$8,776.72
			Payments/Credits	\$-8,776.72
			Balance Due	\$0.00

EXHIBIT C



CURRAN COURT REPORTING

Professional Shorthand Reporters

Tel. (781) 279-8400

Fax (781) 279-8488

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FEDERAL I.D. #	015-58-1201
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DATE	8/2/2005
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BILL TO

Clements & Clements, LLP
 Jeffrey D. Clements, Esquire
 50 Federal Street
 Boston, MA 02110

INVOICE #	3377
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NAME OF CASE:

James M. Plasse vs. Tyco Electronics
 Corporation

TERMS	REPORTER	JOB NAME
Net 30	Nancy M. Walsh	072205JP

DATE	DEPOSITION OF:	ORIG/COPY	NO. OF PAGES	RATE	AMOUNT
7/22/2005	James M. Plasse Volume 3 Minimum Transcript Fee ASCII Disk	Original	28	0.00	0.00
		minimum fee		150.00	150.00
		ASCII Disk	1	25.00	25.00
		Postage/Handl	1	4.00	4.00

Please make checks payable to Jacqueline Curran d/b/a
 Curran Court Reporting. Federal ID # 015-58-1201.

Total \$179.00

21 Rowe Hill Road
 Stoneham, Massachusetts 02180
 E-mail: currancourtrep@yahoo.com

EXHIBIT D

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

DATE: 07-18-05

PAYEE:

[NAME REDACTED]

PAYEE #: 215036

211354

DATE	VOUCHER NUMBER	INVOICE NUMBER	DESCRIPTION	C/L ACCT. NO.	NET AMOUNT
07-15 05	342009	Retainer Fee		07012101	\$3,000.00
TOTAL					\$3,000.00

EXHIBIT E

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 MAURICIO LEON,

8 Plaintiff,

9 v.

10 IDX SYSTEMS CORPORATION et al.,

11 Defendants.
12

No. C03-1158P

ORDER DISMISSING PLAINTIFF'S
CLAIMS DUE TO PLAINTIFF'S
SPOILIATION OF EVIDENCE

13
14 This matter comes before the Court on Defendant's Motion to Dismiss and for Terms re:
15 Spoliation of Evidence and Plaintiffs' Response. Defendant IDX seeks dismissal of this case or other
16 appropriate sanctions against Plaintiff Dr. Mauricio Leon for having erased data relevant to the
17 litigation from the hard-drive of his IDX-issued computer using a wiping program that he created
18 after he had notice of the pendency of the litigation. Having reviewed the papers and the pleadings
19 submitted by the parties, and having heard oral argument on the issues and reviewed the video
20 transcript of Dr. Leon's deposition, the Court hereby GRANTS Defendant's motion. Plaintiff's
21 claims are hereby DISMISSED. In addition, Plaintiff shall pay Defendants \$65,000.00 to reimburse
22 them for the expense incurred in investigating and litigating the issue of spoliation.

23 BACKGROUND

24 This matter originally came before the Court as two related cases. On April 25, 2003, IDX
25 Systems Corporation ("IDX") brought an action for declaratory relief, essentially seeking a
26 declaration that it can terminate Dr. Mauricio Leon's employment without violating the anti-

1 retaliation provisions of the False Claims Act, 31 U.S.C. § 3730(h), the Sarbanes-Oxley Act of 2002,
2 and the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq or its State law
3 counterpart, the Washington Law Against Discrimination ("WLAD"), RCW 49.60. On May 20,
4 2003, Dr. Leon filed his own complaint for damages and injunctive relief, including claims for
5 retaliation under the False Claims Act, violations of the ADA and WLAD, and state common law
6 claims of wrongful termination, fraudulent inducement, and negligent and intentional infliction of
7 emotional distress. The Court ordered the cases to be consolidated, with Dr. Leon as the plaintiff in
8 name.

9 Dr. Mauricio Leon began his employment with IDX in May of 2001 pursuant to an "at-will"-
10 style employment agreement. His job title was "Senior Director, Medical Information," and he was
11 allegedly compensated at an annual salary of \$160,000 plus bonus payments. His job duties included
12 involvement with what was known as the "SAGE" project, a project funded through the National
13 Institute for Standards and Technology ("NIST") for the purpose of developing software tools and
14 technologies in the area of medical informatics.

15 Both parties allege that in mid-2002 Dr. Leon began complaining of mismanagement of the
16 SAGE project, claiming that certain aspects of the cost-sharing reporting may be illegal. By
17 September 9, 2002, it appears that serious disagreements had arisen between the parties. IDX
18 alleges that on this date Dr. Leon demanded an exorbitant severance package in exchange for his
19 silence regarding alleged federal false claims. In any case, it appears that Dr. Leon worked
20 intermittently through several stints of different types of administrative and medical leave during the
21 next several months. Over this time, Dr. Leon also alleges that IDX was violating the False Claim
22 Act through "various illegal and fraudulent activities" and through its hindrance of various audits of
23 the SAGE program grant. Dr. Leon also claims that IDX constructively discharged him, and failed to
24 accommodate his stress-related disability by allowing him to telecommute.

25 IDX served the summons on its complaint on April 28, 2003. On April 30, and on May 7,
26 2003, IDX's attorneys sent letters to Dr. Leon's attorney, asking that Dr. Leon return the IDX-issued

1 laptop computer in his possession to IDX. (Taylor Decl., Exs. A, B). On May 8, 2003, Dr. Leon's
2 attorney responded to IDX's request in writing and asked if Dr. Leon could keep the laptop so that
3 he could assist auditors who were in the process of auditing the Sage Project. (Id., Ex. C). On May
4 9, 2003, counsel for IDX responded that Dr. Leon could keep the laptop for the "specific purpose" of
5 responding to SAGE Project auditors, should they need to speak with him. (Id., Ex. D). Both the
6 April 30 and the May 9 letters cautioned Dr. Leon's counsel that Dr. Leon should take care to
7 preserve all data on the computer and to make sure no information was lost.

8 By July 11, 2003, the SAGE Project auditors had completed their task. (Id. at ¶ 8). Around
9 this time, Dr. Leon's counsel withdrew from the case and he hired his current counsel. By October
10 24, 2003, counsel for both sides were again negotiating for the return of the laptop. (Id. at ¶¶ 9, 10).
11 Not until January 21, 2004, were both sides able to strike a deal. (Calfio Decl., Ex. A). IDX's
12 computer forensics expert took delivery of the laptop on February 5, 2004. (Norberg Decl., at ¶2).

13 IDX's expert reported in a declaration submitted to the Court that during his examination of
14 Dr. Leon's computer, he noticed that "all data in the hard drive's unallocated space (*i.e.* the space
15 where data that has purportedly been deleted by the user is housed) was intentionally wiped. . ." (Id.
16 at ¶5). Additionally, the forensics expert determined that the computer had been used to view and
17 download pornographic files, in contravention of IDX company policy. (Id. at ¶8). Both of these
18 conclusions are supported by Dr. Leon's own testimony in a May 13, 2004, deposition.

19 Dr. Leon, in his deposition, admits deleting entire directories of personal files as early as
20 October 2002, and after he was placed on leave by IDX in April 2003. He describes these files as
21 family pictures and personal financial information, which he deleted by directory, rather than one-by-
22 one. (Gross Decl. at 9-12). Later in the deposition, Mr. Leon also states that in the week before he
23 shipped the computer back to IDX he wrote a program to write over or "wipe" any deleted files from
24 the unallocated space in the IDX laptop's hard-drive. (Id. at 16-21). According to Dr. Leon, his
25 program would not allow a subsequent user to read the files he had deleted, but an identifying tail or
26 head of the data would remain. (Id. at 19). IDX's computer forensics expert observed that Dr.

1 Leon's program deleted more than 2,000 files from the hard-drive of his computer. (Norberg Decl. at
2 3). Although Dr. Leon alleges that the purpose of his wiping program was to make sure that
3 someone would not be able to see the personal files that he deleted, at least some of the remaining
4 identifiers of the deleted files reveal that some of the wiped files could have pertained to Dr. Leon's
5 work at IDX or the SAGE project. Additionally, many of the wiped files appear to be of a
6 pornographic nature. (Norberg Decl., Exs. A, B).¹

7 ANALYSIS

8 Federal trial courts are vested with a wide range of inherent powers that allow them to govern
9 their courtrooms and the litigation processes before them. Chambers v. Nasco, 501 U.S. 32, 43
10 (1991). An example of these inherent powers is the discretionary power of a federal trial court to
11 levy appropriate sanctions against a party who prejudices its opponent through the spoliation of
12 evidence that the spoliating party had reason to know was relevant to litigation. Glover v. Bic
13 Corporation, 6 F. 3d 1318 (9th Cir. 1993). Inherent powers must be used only with restraint and
14 discretion. Chambers, 501 U.S. at 44. In order to sanction a party to litigation for spoliation of
15 evidence the Court must determine first whether or not there was a duty to preserve the evidence at
16 issue. Turner v. Hudson Transit Lines, Inc., 142 F.R.D. 68, 72 (S.D.N.Y. 1991). If a duty existed,
17 the court must also consider the prejudice suffered by the non-spoliating party and the level of
18 culpability of the spoliator. After considering these factors, a court must then consider all available
19 sanctions and determine the appropriate one. See e.g. Fujitsu Ltd. v. Federal Express Corp. 247 F.
20 3d 423 (2nd Cir. 2001); Wm. T. Thompson Co. v. GNC, 593 F. Supp. 1443 (C.D. Cal. 1984).

21 I. Did Dr. Leon Have a Duty to Preserve Data on His IDX-issued Laptop?

22
23
24 ¹ A week after oral argument was heard on the issue of spoliation, Dr. Leon came forward with
25 an unsolicited statement that he had allegedly made backup copies of his laptop's hard-drive before he
26 ran the wiping program. He had not revealed this information during his deposition. This self-serving
revelation will not be credited by the Court at this late date, however, because Mr. Leon's credibility on
this matter is questionable, his revelation is untimely, and there is no way to verify whether these backups
are full, true copies of the original hard-drive in dispute.

1 A litigant or potential litigant is under a duty to preserve evidence in his possession that he
2 knows or should know is relevant to litigation or which might lead to the discovery of admissible
3 evidence. Id., 593 F. Supp. 1443 at 1455. Courts have applied this principle even when a complaint
4 has not yet been filed. Turner, 142 F.R.D. at 73 (citing Callelupo v. FMC Corp., 126 F.R.D. 545 (D.
5 Minn. 1989)). In Callelupo the court found that an employer had notice of a pending class action a
6 month before the complaint was served, based on conversations that the plaintiff in that case had had
7 with the company's equal employment opportunity manager several months before the litigation
8 formally began. 126 F.R.D. at 550. As a result, the Callelupo court held that destruction of evidence
9 after this date was sanctionable. Id. In the case at hand, Dr. Leon threatened IDX with litigation as
10 early as September 2002. By April 25, 2003, IDX had filed an action for declaratory relief. On April
11 30 and May 7, Dr. Leon's counsel had received letters regarding the litigation and expressly
12 cautioning Dr. Leon to ensure that no data was lost on his computer. This Court finds Dr. Leon
13 knew or should have known that he was in possession of evidence relevant to pending litigation by
14 April 30, 2004. Thus, Dr. Leon had a duty to preserve evidence in his possession no later than this
15 date. Any spoliation that took place after this date is sanctionable.

16 II. Is IDX Prejudiced by the Loss of Evidence from Dr. Leon's Laptop?

17 Before Dr. Leon returned the laptop to IDX, Dr. Leon's counsel acknowledged in an October
18 24, 2003, email to IDX attorneys that both sides recognized the relevance of the material on the
19 laptop stating that: "in many instances the files are the original form of potentially relevant evidence."
20 (Turner Decl. Ex. E). By purposely creating a program to wipe the hard-drive of "potentially
21 relevant evidence," Dr. Leon has precluded IDX from using any information that may have been
22 stored in the hard-drive in its defense. Although Dr. Leon claims that he only wiped personal files,
23 there is evidence (as discussed above) that not everything that was erased was personal. The Court
24 knows from Dr. Leon's own deposition testimony that he was not, in fact, meticulously selective
25 about the information he wiped, but that he chose to delete entire directories without verifying their
26 contents. Defendants aptly note that, "Leon was not entitled to make unilateral decisions as to what

1 information on his laptop was relevant to this suit based on his subjective determination of what he
2 considered “personal.” (Defs.’ Reply at 5). Indeed, there could be a wealth of “personal” material
3 that could be relevant to Dr. Leon’s ADA and employment-related claims. Defendants give
4 examples of what might have been in Dr. Leon’s personal directories that could have helped their
5 case: Dr. Leon’s correspondence with Realtors, financial institutions, friends or family would be
6 relevant to the timing of his decision to resign from IDX; communications with Dr. Leon’s health care
7 providers or friends and family regarding the stress-related illness he allegedly developed while
8 working at IDX would be relevant to his ADA claims; efforts to find other employment or start a
9 business instead of remaining with IDX could also be relevant. (Defs.’ Reply at 5). The point is that
10 because of Dr. Leon’s actions there is now no way of knowing what might have been stored on the
11 laptop’s hard-drive and no reliable way of recreating what might have been there. Under these
12 circumstances, a party responsible for the destruction of potential evidence has no right to a
13 presumption that the documents destroyed were irrelevant. National Assen of Radiation Survivors v.
14 Turnage, 115 F.R.D. 543, 557 (N.D. Cal., 1987) (quoting Alexander v. National Farmers Org., 687
15 F. 2d 1173 (8th Cir. 1982)). On the contrary, courts must draw the strongest inferences allowable in
16 favor of the party denied access to potentially relevant evidence. Id.

17 Leon’s counsel suggests that IDX is not prejudiced because: 1) IDX had sole possession of
18 Dr. Leon’s laptop for three weeks starting September 11, 2002, when Dr. Leon was escorted out of
19 the IDX building because of the parties’ dispute, and 2) Dr. Leon was on the IDX network and may
20 have sent much of the material on his computer over the network at some time. Plaintiffs assert that
21 IDX employees had a chance to inspect the contents of Dr. Leon’s computer either while it was in
22 their possession or because a portion of the contents of Dr. Leon’s laptop is probably located
23 somewhere on IDX’s network. This argument, however, does not hold up under scrutiny. First,
24 much of what might have been pertinent to IDX’s defense would have been created after October
25 2002, during the year when the relationship between the parties was at its most contentious. Second,
26 Dr. Leon stated in his deposition that he wiped his hard drive specifically to avoid having IDX

1 officials see what was there. (Calfo Decl. at 15). This same impulse would also probably have kept
2 him from sending sensitive information about his SAGE project observations, health issues or other
3 employment-related concerns over the IDX network. Additionally, there is no evidence that he
4 shared his pornographic web browsing on the IDX network because this would have violated
5 company policy, as did his use of the laptop for this purpose. Because the type of evidence just
6 discussed would likely be at the heart of IDX's defense were it available, this Court finds that Dr.
7 Leon's wiping of the laptop hard-drive severely prejudices Defendants.

8 III. Dr. Leon's Culpability

9 Willful spoliation occurs when a party has clear notice of an obligation to preserve evidence
10 and proceeds to intentionally destroy evidence in spite of its obligation not to. Computer Associates
11 Int'l.v. American Fundware, Inc., 133 F.R.D. 166, 170 (D. Colo., 1990). Under the most lenient
12 interpretation, Dr. Leon's behavior amounts to willful spoliation of evidence because he knew or
13 should have known no later than April 30, 2003, that he was under a duty to preserve all data on the
14 laptop. In flagrant disregard for this duty, however, he went to the trouble of writing his own C-
15 language program to write over deleted documents in his hard-drive, thus using his own computer
16 expertise and knowledge to block forensic detection of whatever information he had stored in and
17 deleted from his personal directories. While Leon argues that his wiping of relevant evidence was
18 negligent because he only meant to wipe "personal" information from the computer, the Court has
19 already established that Dr. Leon did not have the authority to make unilateral decisions about what
20 evidence was relevant to this case. Furthermore, Dr. Leon did not even verify that he was only
21 deleting personal information. As mentioned previously, Dr. Leon deleted whole directories without
22 looking at their contents and designed his wiping program to write over data indiscriminately.
23 (Kieffer Decl., Ex. 1 at 15). The Court finds that the extraordinary measures to which Dr. Leon
24 resorted to destroy evidence relevant to this litigation merit a finding of bad-faith.

25 IV. Sanctions

26

1 Having determined that Dr. Leon was under a duty to preserve data on his computer at the
2 date he created the wiping program, that IDX was severely prejudiced by Dr. Leon's use of the
3 wiping program, and that design and use of a wiping program constituted bad-faith spoliation on Dr.
4 Leon's part, this Court may sanction Dr. Leon's behavior. Wm. T. Thompson Co., 593 F. Supp. at
5 1455. A wide range of sanctions is available because spoliation encompasses a wide range of
6 behaviors. Henderson v. Tyrell, 80 Wn. App. 592, 605, 910 P. 2d 522. The Court may exclude
7 certain evidence at trial, direct that an adverse inference instruction against the spoliator be given to
8 the jury, fine or demand monetary sanctions from the spoliator, or dismiss a complaint or enter a
9 default judgment against the spoliator. Id. at 1457. Sanctioning spoliators serves a punitive and a
10 prophylactic function. Nation-wide Check Corporation v. Forest Hills Distributors, Inc., 692 F. 2d
11 214, 218 (1st Cir. 1982). By punishing a spoliator, the Court ensures that he will not profit through his
12 misdeeds. Additionally, those who might be tempted to emulate the spoliator's behavior will be
13 deterred. Where a spoliator's behavior is egregious, dismissal or default is appropriate. Computer
14 Associates Intel., 133 F.R.D. at 168. Accordingly, this Court finds that dismissal of Dr. Leon's
15 claims is an appropriate sanction for his behavior.

16 In this instance, less drastic sanctions are not useful. A ruling excluding evidence would be
17 futile, as the most salient evidence has been destroyed and any material that might have been helpful
18 to the Defendants cannot be produced due to the wiping of the hard-drive. Fashioning a jury
19 instruction that creates a presumption in favor of the Defense would leave Defendants equally
20 helpless to rebut any material the Plaintiff might use to overcome the presumption. Finally, while a
21 fine might adequately punish Dr. Leon for his actions, it does nothing to arm the Defense with
22 evidence to counter Plaintiff's claims.

23 In this case, the extreme nature of Dr. Leon's bad-faith behavior, combined with the harm
24 done to Defendants merits a dismissal of Dr. Leon's claims with prejudice. Additionally, Defendants
25 IDX submitted a detailed affidavit at oral argument outlining the expenses it incurred investigating
26 and litigating the issue of Dr. Leon's spoliation. The costs came to approximately \$65,000.00. The

1 Court has reviewed this information and finds the charges and costs listed therein reasonable. In
2 order to restore IDX to where it would have been had Dr. Leon observed the rules of litigation, this
3 Court also orders Dr. Leon to pay Defendants \$65,000.00.

4
5 CONCLUSION

6 Because Dr. Leon's behavior demonstrates an egregious disregard for the litigation process
7 and IDX's case was damaged by his actions, this Court GRANTS Defendants' motion. The
8 Plaintiff's claims are hereby ordered DISMISSED with prejudice and Plaintiff Leon is ordered to pay
9 \$65,000.00 in litigation costs to Defendant IDX within sixty days of this order. Defendants shall
10 advise the Court which, if any, of their outstanding motions they would like the Court to consider.
11 This notification shall be made within five days of this order.

12
13 The Clerk is directed to send copies of this order to all counsel of record.

14 Dated: September 30, 2004

15 /s/ Marsha J. Pechman

16 Marsha J. Pechman
17 United States District Judge
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